

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NOS. C-110233
		C-110234
Plaintiff-Appellee,	:	C-110235
vs.	:	TRIAL NOS. 08TRC-38995A
		11TRC-7719A
MICHAEL S. HOLLY,	:	
		<i>JUDGMENT ENTRY.</i>
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 3(A); App.R. 11.1(E); Loc.R. 11.1.1.

Michael Holly appeals his conviction for operating a vehicle while under the influence of alcohol (“OVI”). We conclude that his assignments of error do not have merit, so we affirm the judgment of the trial court.

On July 17, 2008, Holly was cited in the case numbered 08TRC-38995A for OVI in violation of R.C. 4511.19(A)(1)(a). After a number of continuances and hearing on motions, the trial was scheduled for February 14, 2011. Because the prosecutor was ill, the case was dismissed, and Holly was recited for the violation under the case numbered 11TRC-7719A. On April 4, 2011, Holly filed a motion to dismiss on speedy-trial grounds. The trial court denied the motion on April 13, 2011. Holly pleaded no contest and was found guilty of the violation on April 14, 2011.

In his first assignment of error, Holly asserts that the trial court erred when it denied his motion to dismiss for violation of his speedy-trial rights. Under R.C. 2945.71(B)(2), a person charged with a first-degree misdemeanor shall be brought to trial within 90 days of his arrest. The time period may be extended by “[a]ny period of delay necessitated by reason of a * * * motion, proceeding, or action made or instituted by the accused” or “[t]he period of any continuance granted on the accused’s own motion, and the period of any reasonable continuance granted other

than upon the accused's own motion[.]" R.C. 2945.72. Holly contends that of the 996-day period from the date that he was arrested to the date that he pleaded no contest, 257 days are chargeable to the state. But having reviewed the transcript of the docket, we conclude that only 64 days were chargeable to the state. The other delays came as a result of motions filed or continuances requested by Holly, or as a result of reasonable continuances taken by the court to rule on various motions. Accordingly, we conclude that Holly was brought to trial within the requisite time period. The first assignment of error is overruled.

In his second assignment of error, Holly asserts that the trial court erred when it overruled his motion to suppress Ohio State Trooper Michael Shimko's testimony about his observations of Holly on the night of his arrest, Holly's statements to Shimko, and any result of tests of Holly's coordination or blood-alcohol content. The trial court concluded that Shimko had probable cause to stop and to arrest Holly. In his appellate brief, Holly does not contest that Shimko had probable cause to stop him. Rather, he contends that Shimko did not have probable cause to arrest him. Having reviewed the record, we conclude that the trial court's findings of fact were supported by competent, credible evidence. *See State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, 797 N.E.2d 71, ¶ 8. Further, we conclude that the facts as determined by the trial court established that Shimko had probable cause to arrest Holly. *See Cincinnati v. Bryant*, 1st Dist. No. C-090546, 2010-Ohio-4474, ¶ 15. The second assignment of error is overruled.

Therefore, we affirm the trial court's judgment.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., SUNDERMANN and HENDON, JJ.

To the clerk:

Enter upon the journal of the court on March 2, 2012

per order of the court _____.

Presiding Judge